

VICTIMS' RIGHTS — Victims' rights, in general — Revised 3/2010

In 1989, the Arizona Supreme Court promulgated Rule 39, Ariz. R. Crim. P., and the Arizona Legislature enacted A.R.S. §§ 13-4401 et seq., to implement the rights of victims in criminal cases. The Victims' Bill of Rights was originally a ballot proposition voted into law in 1990. The governor proclaimed Article 2, § 2.1 of the Arizona Constitution into law on November 26, 1990. The Victims' Bill of Rights guarantees victims certain rights under the Arizona State Constitution to preserve and protect their rights to justice and due process. Under A.R.S. § 13-4418, the victims' rights statutes "shall be liberally construed to preserve and protect the rights to which victims are entitled."

The language of the Arizona Constitution defined a victim as "a person against whom the criminal offense has been committed." Because juveniles commit delinquent acts rather than criminal offenses, the Victims' Bill of Rights did not originally apply to victims of offenses committed by juveniles; however, in 1996, the Arizona Legislature extended the constitutional coverage to victims of juvenile offenses by enacting A.R.S. § 8-381 et seq.

Article II, § 2.1(C) of the Arizona Constitution and A.R.S. § 13-4401(19) define "victim" as "a person against whom the criminal offense has been committed." However, some of the victim's rights under the Victims' Bill of Rights attach "before the final determination of whether a crime has in fact been committed," see Rule 39(a), Ariz. R. Crim. P., Comment to 1991 Amendment -- for instance, the right to be treated with fairness, respect, and dignity. Article 2, §

2.1(1), (12). Accordingly, Rule 39(a)(1), Ariz. R. Crim. P., defines "victim" as a person against whom a criminal offense has allegedly been committed:

As used in this rule, a "victim" is defined as a person against whom a criminal offense as defined by § 13-4401(6) has allegedly been committed

Additionally, A.R.S. § 13-4401(6) defines "criminal offense" in terms of probable cause:

"Criminal offense" means conduct that gives a peace officer or prosecutor probable cause to believe that one of the following has occurred:

(a) A felony.

(b) A misdemeanor involving physical injury, the threat of physical injury or a sexual offense.

However, in *State ex rel. Thomas v. Klein*, 214 Ariz. 205, 150 P.3d 778 (App. 2007), the court held § 13-4401(6) unconstitutional, because it limited the categories of persons protected by the Victims' Bill of Rights.

Under A.R.S. § 13-4402(A), most victims' rights "arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim." Those rights "continue to be enforceable . . . until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution." *Id.* If the defendant is ordered to pay restitution to a victim, the victim's rights "continue to be enforceable until restitution is paid or a criminal restitution order is entered in favor of the victim pursuant to § 13-805." *Id.*; Rule 39 (a)(1), Ariz. R. Crim. P.; *State ex rel. Hance v. Arizona Board of Pardons and Paroles*, 178 Ariz. 591, 596-97, 875 P.2d 824, 829-30 (App. 1993). The victim's rights must continue past the date of the

defendant's conviction because the Victims' Bill of Rights gives the victim the right to be notified of the defendant's release or escape from custody and the right to be heard at any post-conviction release proceeding. Arizona Constitution, Article 2, § 9; A.R.S. §§ 8-395, 13-4414.

Within seven days after a defendant is charged, the petitioner must give the victim notice of the victims' rights and the charges against the defendant, and inform the victim of the "procedures a victim shall follow to invoke his right to confer with the prosecuting attorney pursuant to § 13-4419." A.R.S. § 13-4408(A)(3). The victim has a number of rights to receive notice, but at most stages of the criminal proceedings, the victim must first request notice for those rights to become effective. The prosecution must send the victim a form to allow the victim to request notice. Once the victim has requested notice, the victim must receive notice of court proceedings, the outcome of the proceedings, any possible release, etc. A.R.S. §§ 13-4405-4411, 13-4412-4416.

The victim has the right to be present at any proceeding at which the defendant has a right to be present, from the initial appearance to any post-sentencing proceedings. A.R.S. §§ 13-4421-4428. The victim can be heard through a personal oral statement, a written statement, or an audio or videotape. A.R.S. § 13-4428(B). However, it is the victim's choice whether or not to exercise his rights, and the court is not precluded from going forward if the victim is not present. A.R.S. § 13-4428(A). Whenever the victim is present, both before, during, and after any court proceeding, the court must "provide appropriate safeguards to minimize the contact that occurs between the victim, the victim's

immediate family and the victim's witnesses and the defendant, the defendant's immediate family and defense witnesses." A.R.S. § 13-4431.

One of the most important of the victims' rights is the right to refuse a pretrial interview by the defendant or his attorney or agent. A.R.S. § 13-4433(A). The defense may only contact the victim through the prosecutor's office; the prosecutor then must promptly notify the victim that the defense has requested an interview and that the victim has the right to refuse. A.R.S. § 13-4433(B). If the victim agrees to be interviewed, the prosecutor's office sets up the interview under conditions dictated by the victim; the victim need not answer any questions and can terminate the interview at any time. A.R.S. § 13-4433(D). If the victim asks, it is the prosecutor's duty "to protect the victim from harassment, intimidation or abuse"; the prosecutor may seek a protective court order to preserve the victim's rights. A.R.S. § 13-4433(D). The prosecutor may attend all interviews unless the victim does not want the prosecutor present. A.R.S. § 13-4433(E). If at trial the defense comments on the victim's refusal to be interviewed, the court must instruct the jury that the victim has a right to refuse. In addition, the victim has the right to privacy, including the right not to testify regarding any personal locating information. A.R.S. § 13-4434. The victim also has a right to a speedy trial. A.R.S. § 13-4435.

It is not grounds for reversal if the victim's rights are not protected. A.R.S. § 13-4436(A). Nevertheless, the victim personally has standing "to seek an order or to bring a special action" to enforce the victim's rights, and the prosecutor also has standing to assert the victim's rights on the victim's request. Rule 32.9(2),

Ariz. R. Crim. P.; A.R.S. § 13-4437(C). *In State ex rel. Hance v. Arizona Board of Pardons and Paroles*, 178 Ariz. 591, 875 P.2d 824 (App. 1993), the defendant raped the victim and was sentenced to life in prison. In 1993, the Board of Pardons and Paroles (the Board) sent a letter to the victim's last known address, but the letter was returned as undeliverable. Thus, the victim never received notice of a parole hearing at which the Board released the defendant to house arrest. The State filed a special action on behalf of the victim challenging the Board's order. Because the victim was entitled to but did not receive the necessary notice, the release order was set aside and a new hearing was ordered under A.R.S. § 13-4436(B) and (C).

In asserting any of the victim's rights, the victim also has the "right to engage and be represented by personal counsel of his or her own choice." Rule 39(c)(4), Ariz. R. Crim. P. If the victim chooses, the victim may bring an action to enforce the victim's rights under Article II, § 2.1, and may be represented by the victim's retained counsel in that action. A.R.S. § 13-4437(A).

A victim whose rights are not protected can sue a governmental agency for damages under the Victims' Bill of Rights, Article II, § 2.1, of the Arizona Constitution. If a governmental entity commits an "intentional, knowing or grossly negligent violation of the victim's rights," the victim can recover damages from that entity, unless that entity is immune from suit on that issue "under common law or statute." A.R.S. § 13-4437(B).